

## Women's rights protection instruments ratified by Kenya:

- **CEDAW:** ratified in 1984
- **CEDAW Protocol:** not ratified
- **Protocole de Maputo:** signed in 2003

**Ratify!** Although Kenya ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, it has not yet ratified the Optional Protocol to CEDAW or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

**Respect!** The Coalition of the Campaign remains particularly concerned about the following continued violations of women's rights: the persistence of discriminatory laws and traditional harmful practices, in particular in the area of the family; violence; obstacles to access to education; under-representation in political life; and obstacles to access to property and health services. The Coalition of the Campaign is also concerned about delays in adoption of legislation that eliminates discrimination and protects women's human rights. Bills pending before parliament include: the Family Protection Bill 2007, the Marriage Bill 2008, the Domestic Violence Bill 1999, the Matrimonial Property Bill 2008, the Equal Opportunities Bill 2008 and the Affirmative Action Bill 2000.

## / Some positive developments...

The Coalition of the Campaign acknowledges the recent adoption of several laws and policies aimed at improving respect for women's rights, including:

- The adoption of the Sexual Offences Act (SOA) in 2006 (enacted in 2008). This Act Harmonises sexual violence legislation into a single law, provides a comprehensive definition of rape, introduces minimum sentences, criminalises sexual harassment and expands sexual offenses to include: gang rape, deliberate infection with sexually transmitted diseases, trafficking for sexual exploitation and child pornography.
- The adoption of two Regulations in 2008 to guide judicial officials in the implementation of the Sexual Offences Act: the Sexual Offences Regulations and the Sexual Offences Dangerous Offenders DNA Data Bank Regulations.
- The introduction, in 2008, of government subsidies to secondary schools to cover tuition and related costs. As a result, the number of students in secondary education, in particular female students, has increased.

## / But discrimination and violence persist

### IN LAW

Kenya has a unified legal system based on the common law system. However, according to the Constitution, family law continues to be governed by customary Christian, Islamic and Hindu laws, alongside statutory law. Despite ongoing discussions on the

harmonisation of such laws, discriminatory provisions remain widespread within each source of law with regard to marriage, divorce and custody of children. Qadis' courts apply personal status law for the Muslim population.

#### **DISCRIMINATORY PROVISIONS OF THE COMMON LAW INCLUDE:**

**Constitution:** While article 70 provides for equality between men and women, article 82(4) exempts certain laws from the prohibition against discrimination in the areas of adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law, as well as tribal and customary laws. Furthermore articles 89 and 91 prohibit women passing their nationality to their husbands and restrict their rights to transfer nationality to their children.

**Family law:** According to the Matrimonial Causes Ordinance, children are defined as males who have not attained the age of 16 and females who have not attained the age of 13 (art. 2). Wives can be prosecuted for adultery but husbands cannot be (art. 11).

**Freedom of movement:** Under the Domicile Act women must have their husbands' or fathers' consent to obtain passports (Ch. 37).

**Property:** The Law of Succession Act terminates the inheritance rights of widows if they remarry. A widow cannot be the sole administrator of her husband's estate unless she has her children's consent (art. 35).

#### **DISCRIMINATORY CUSTOMARY AND RELIGIOUS LAWS INCLUDE:**

**Marriage:** Whilst statutory law fixes the minimum age for marriage at 18 (Children's Act, 2001), customary and religious laws authorise early marriages. Customary and Muslim laws authorise polygamy.

**Divorce:** Muslim laws provide for men to repudiate their wives (unilateral termination of marriage by pronouncing the intention to divorce three times). Under Muslim laws women cannot divorce their husbands.

**Custody:** Under customary law, the father has custody of the children.

### **IN PRACTICE**

#### **• Discrimination in the family**

In addition to the application of discriminatory statutory, customary and religious laws, discriminatory traditional practices include the payment of a bride price, and wife inheritance, or levirate, wherein a widow is "inherited" by a male relative of her deceased husband.

#### **• Violence**

Domestic violence remains widespread and perpetrators continue to benefit from impunity. There is no specific legislation criminalising domestic violence. Marital rape is not criminalised. A Domestic Violence Bill, which includes a provision sanctioning marital rape, has been pending since 1999. Law enforcement officials are generally reluctant to investigate domestic violence reports as they are considered "domestic issues."

Rape is extremely prevalent. Although the Penal Code, section 139, criminalises rape and provides for a sentence of up to life imprisonment, the rate of reporting and prosecution remains low due to victims' fear of retribution, police reluctance to intervene, poor training of prosecutors, and unavailability of medical personnel.

The traditional practice of ritual “cleansing” of widows, which involves forcing them to have sex with a social outcast, usually without protection, persists in some communities. Women living in the Internally Displaced Persons camps across Kenya are also particularly vulnerable to rape and other crimes of sexual violence.

Despite legal prohibition (Children’s Act, 2001), female genital mutilation (FGM) remains widely practiced, with prevalence varying considerably depending on ethnic group. In addition, the legal prohibition does not apply to women over the age of 18. In 2009, it was estimated that 40% of women have undergone FGM in Kenya.

### • **Obstacles to access to education**

Despite the provision of free and compulsory primary and secondary education, girls’ access to education remains limited, in part due to traditional attitudes, as

## **The Coalition of the Campaign calls on the authorities of Kenya to:**

- **Reform or repeal all discriminatory statutory laws** in conformity with CEDAW and the Maputo Protocol, including discriminatory provisions within the Constitution, Matrimonial Causes Ordinance, Domicile Act and the Law of Succession Act.
- **Harmonise statutory, customary, and religious laws in conformity with CEDAW and the Maputo Protocol** and ensure that where conflicts arise the statutory provisions prevail.
- **Strengthen measures to eliminate discrimination within the family**, including by urgently adopting the Family Protection Bill (2007) and the Marriage Bill (2008).
- **Strengthen laws and policies to protect women from violence and support victims**, including by adopting the Domestic Violence Bill; extending the prohibition of FGM to adult women; removing obstacles to victims’ access to justice; ensuring effective prosecution and punishment of offenders; implementing training for all law enforcement personnel and health workers; increasing financial resources allocated to domestic violence programs and services; implementing public awareness campaigns targeting women and men, traditional and community leaders and adopting a zero tolerance policy on all forms of violence against women.
- **Ensure women’s access to education** including by implementing the provision of the Education Act concerning the right of pregnant girls to continue education; and addressing socio-economic and cultural factors that impede access to education.
- **Ensure women’s representation in decision-making positions**, including by adopting the Affirmative Action Bill 2000.
- **Ensure women’s access to property**, including through the adoption of the Matrimonial Property Bill 2008 and through measures facilitating women’s access to land.
- **Ensure women’s access to health**, and strengthen efforts to reduce the incidence of maternal mortality, by increasing knowledge of and access to affordable contraceptive methods and reproductive health services, improving sex education programmes and establishing family planning services.
- **Ratify the Optional Protocol to CEDAW and the Maputo Protocol.**

well as high dropout rates due to pregnancy and early and forced marriage (estimated 80,000 annually). The Education Act provides for the right of pregnant girls to continue education until and after giving birth, but pregnant girls continue to be expelled from schools.

### • Under-representation in political life

Kenyan women continue to remain underrepresented in political and public life. In 2009, women composed 9.8% of elected members in Parliament, 5.8% of ministers in Government, and 27% of ambassadors and high commissioners in the diplomatic service. There are no women judges in the Court of Appeal. Despite lobbying efforts by women's rights organizations, the Affirmative Action Bill 2000, which imposes a 30% quota for all government appointments remains pending.

### • Obstacles to access to property

Although the Law of Succession Act provides for the surviving spouse to inherit the entire marital estate, many widows are deprived of inheritance (art. 35). The husband's family often evicts the widow from her home and confiscates other marital property. The Matrimonial Property Bill 2008, aims at removing these inequalities, but remains pending. Women constitute 75% of the agricultural workforce, however they only hold 6% of all land titles.

### • Obstacles to access to health

The maternal mortality rate (560 per 100,000 births) remains high, due to lack of skilled birth attendants, malaria, HIV/AIDS, low rates of contraceptive usage, and unsafe abortions. Women lack access to quality sexual and reproductive health services, family planning services, contraception and sexual education.

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## PRINCIPAL SOURCES

Focal Point: KHRC

CEDAW Committee Recommendations, July 2007

OMCT, Alternative Report to the UN Committee against Torture, June 2009

Wikigender, [www.wikigender.org](http://www.wikigender.org)

**For more information on women's rights and the actions of the campaign in Kenya, see: [www.africa4womensrights.org](http://www.africa4womensrights.org)**

## THE CAMPAIGN FOCAL POINT IN KENYA

### Kenya Human Rights Commission (KHRC)



KHRC is an independent human rights NGO, established in 1992 with the vision of entrenching human rights and democratic values in Kenya. The Mission of KHRC is to promote, protect and enhance the realisation of all human rights for all individuals and groups. One of the main objectives within KHRC's Strategic Plan for 2008-2012, is mainstreaming equality, non discrimination, and respect for diversity.

[www.khrc.or.ke](http://www.khrc.or.ke)